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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 STEPHEN C. PEREZ,

8 Petitioner,

9 v.

10 STATE OF WASHINGTON,

11 Respondent.

NO: 4:19-CV-5260-TOR

ORDER SUMMARILY DISMISSING  
HABEAS PETITION

12  
13 Petitioner, a prisoner at the Coyote Ridge Corrections Center, brings this *pro*  
14 *se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28  
15 U.S.C. § 2254. The \$5.00 filing fee has been paid.

16 **PROPER RESPONDENT**

17 An initial defect with the Petition is that it fails to name a proper party as a  
18 respondent. The proper respondent in a federal petition seeking habeas corpus relief  
19 is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426  
20 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the

1 petitioner is incarcerated, the proper respondent is generally the warden of the  
2 institution where the petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81 F.3d  
3 891 (9th Cir. 1996). Failure to name a proper respondent deprives federal courts of  
4 personal jurisdiction. *See Stanley*, 21 F.3d at 360.

### 5 **EXHAUSTION REQUIREMENT**

6 Petitioner challenges his 2019 Benton County jury conviction for attempted  
7 rape second degree and communication with a minor. He was sentenced to 84  
8 months incarceration. Petitioner indicates that his direct appeal to the Washington  
9 State Court of Appeals, Division III, is still pending. ECF No. 1 at 2.

10 In his grounds for relief, Petitioner argues that the State of Washington has no  
11 jurisdiction to decide federal constitutional matters. ECF No. 1 at 5-12. It has long  
12 been settled that state courts are competent to decide questions arising under the U.S.  
13 Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) (“It is the duty of the  
14 state court, as much as it is that of the federal courts, when the question of the validity  
15 of a state statute is necessarily involved, as being in alleged violation of any  
16 provision of the federal constitution, to decide that question, and to hold the law void  
17 if it violate that instrument.”); *see also Worldwide Church of God v. McNair*, 805  
18 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as competent as federal  
19 courts to decide federal constitutional matters). Therefore, Petitioner’s arguments  
20 to the contrary lack merit.

1        Additionally, before a federal court may grant habeas relief to a state prisoner,  
2 the prisoner must exhaust the state court remedies available to him. 28 U.S.C.  
3 § 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally requires that  
4 a prisoner give the state courts an opportunity to act on his claims before he presents  
5 those claims to a federal court. *O’Sullivan v. Boerckel*, 526 U.S. 838 (1999). A  
6 petitioner has not exhausted a claim for relief so long as the petitioner has a right  
7 under state law to raise the claim by available procedure. *See Id.*; 28 U.S.C.  
8 § 2254(c).

9        To meet the exhaustion requirement, the petitioner must have “fairly  
10 present[ed] his claim in each appropriate state court (including a state supreme court  
11 with powers of discretionary review), thereby alerting that court to the federal nature  
12 of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513 U.S. 364,  
13 365–66 (1995). A petitioner fairly presents a claim to the state court by describing  
14 the factual or legal bases for that claim and by alerting the state court “to the fact  
15 that the ... [petitioner is] asserting claims under the United States Constitution.”  
16 *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249 F.3d 895, 898 (9th  
17 Cir. 2001) (same). Mere similarity between a claim raised in state court and a claim  
18 in a federal habeas petition is insufficient. *Duncan*, 513 U.S. at 365–366.

19        Furthermore, to fairly present a claim, the petitioner “must give the state  
20 courts one full opportunity to resolve any constitutional issues by invoking one

1 complete round of the State’s established appellate review process.” *O’Sullivan*,  
2 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,  
3 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275  
4 (1971). It does not appear from the face of the Petition or the attached documents  
5 that Petitioner has exhausted his state court remedies as to each of his grounds for  
6 relief. Indeed, Petitioner affirmatively represents that he did not exhaust his state  
7 court remedies.

### 8 **GROUND FOR FEDERAL HABEAS RELIEF**

9 Petitioner asserts that the Washington state constitution contradicts the federal  
10 constitution regarding the Fifth Amendment right to “presentment or indictment of  
11 a Grand Jury.” He claims “no bill of indictment” was brought against him rendering  
12 his arrest, conviction and imprisonment illegal.

13 Petitioner seems to argue that because the state courts have defied “federally  
14 established procedures and processes for the adjudication of crimes” only “a court  
15 of federal jurisdiction” has jurisdictional authority over his claims. His bald  
16 assertion that “due process of the law was ignored” is unsupported by his factual  
17 allegations.

18 The United States Supreme Court stated long ago: “Prosecution by  
19 information instead of by indictment is provided for by the laws of Washington.  
20 This is not a violation of the Federal Constitution.” *See Gaines v. State of*


1 *Washington*, 277 U.S. 81, 86 (1928). There is no federal constitutional violation  
2 when a prosecuting attorney's criminal information is substituted for the grand jury's  
3 indictment. *See Hurtado v. California*, 110 U.S. 516 (1884) (rejecting the claim that  
4 an indictment is essential to due process of law and that a state violates the  
5 Fourteenth Amendment by prosecuting a defendant with a criminal information).  
6 Consequently, Petitioner's assertions to the contrary presented in his four grounds  
7 for federal habeas relief are legally frivolous.

8 Because it plainly appears from the petition and the attached exhibits that  
9 Petitioner is not entitled to relief in this Court, **IT IS ORDERED** the petition, ECF  
10 No. 1, is **DISMISSED** pursuant to Rule 4, Rules Governing Section 2254 Cases in  
11 the United States District Courts.

12 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,  
13 enter judgment, provide copies to Petitioner, and close the file. The Court certifies  
14 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be  
15 taken in good faith, and there is no basis upon which to issue a certificate of  
16 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of  
17 appealability is therefore **DENIED**.

18 **DATED** December 10, 2019.



  
THOMAS O. RICE  
Chief United States District Judge